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No. 06-404

In The

Supreme Court of the United States

WILLIAM F. HANLON, III,

Petitioner,

v.

THE FLORIDA BOARD OF BAR EXAMINERS,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In December 1979 Petitioner, as a 26-year-old police officer in Miami, Florida, participated in the coverup of a fatal police beating of a black motorcyclist. He did not beat the motorcyclist, but obeyed his sergeant's orders to aid in the coverup. He was never tried for or convicted of any crime. When a Tampa, Florida jury acquitted the other officers of murder, the verdict set off a wave of rioting and civil unrest in Miami, Florida.

Decades later Petitioner went to law school and applied for admission to The Florida Bar. In June 2000, The Florida Board of Bar Examiners ("the Board") recommended that he not then be admitted, but ruled that his participation in those notorious events of 1979 was not forever disqualifying and that he "should be able to establish rehabilitation in the future to allow his admission to the legal profession." The Florida Supreme Court approved that recommendation. Petitioner then redoubled his rehabilitation efforts and reapplied. The Board again recommended against his admission on the basis of insufficient rehabilitation.

In April, 2006, 18 months after oral argument on a petition to admit him despite the Board's recommendation, the Supreme Court of Florida ruled in a one paragraph order that Petitioner will "not be admitted to the Bar now or at any time in the future" solely because of his participation in the events of 1979.

QUESTIONS PRESENTED – Continued

Question 1

Whether Petitioner's due process rights were violated when the Florida Board of Bar Examiners and the Supreme Court of Florida ruled that he could be rehabilitated and admitted to The Florida Bar but the court, without any prior notice or opportunity to be heard, changed its mind 6 years later and ruled that he could *never* be admitted.

Question 2

Whether Petitioner's single episode of misconduct is so remote in time – now more than 26 years – that it is, as a matter of due process, not permanently disqualifying for admission to the Bar when counterbalanced with his spotless citizenship, contrition and remarkable record of community service and rehabilitation.

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is William F. Hanlon, III, an individual citizen of the United States, residing in Fort Lauderdale, Florida.

Respondent

Respondent, the Florida Board of Bar Examiners, is an arm of the Supreme Court of Florida that investigates the character and fitness of applicants to the Bar and makes recommendations to the court on the issue of lawyer admissions. It is based in Tallahassee, Florida.

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OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at *Florida Board of Bar Examiners Re: W.F.H.*, 933 So.2d 482 (Fla. 2006).

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of the State of Florida was entered on April 20, 2006. (App. 1). By order dated June 21, 2006, the Supreme Court of the State of Florida denied a timely and authorized motion for rehearing. (App. 36). This petition for writ of certiorari is filed within 90 days of that date.

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

Constitution of the United States, Amendment XIV, Due Process Clause.

STATEMENT OF THE CASE

On December 17, 1979, William F. Hanlon ("Hanlon") was a 26 year old police officer working for the Dade County Police Department in Miami, Florida. At approximately 2:00 a.m. on that morning, he responded to a high speed police chase of a motorcyclist, Arthur McDuffie. When Hanlon arrived on the scene, Mr. McDuffie was already stopped by other officers. Mr. McDuffie resisted arrest and the officers used force to subdue him. Hanlon

participated in that effort. He lawfully pulled Mr. McDuffie from behind, forced him to the ground with his nightstick and handcuffed him. Hanlon then stepped about 8 yards away. Shortly thereafter, another officer rapidly struck Mr. McDuffie in the head with a metal flashlight, inflicting injuries that would lead to his death three days later. (App. 22, 26).

While Mr. McDuffie was handcuffed and on the ground, Hanlon went up to him and gestured to other officers how to break his legs. He tapped lightly on his legs below the knee to illustrate. He did nothing further to Mr. McDuffie and none of the officers followed through either. Hanlon confessed that his gesturing "defies explanation," that it was "callous humor, inappropriate."

While still on the scene, Hanlon was directed by a sergeant and several other officers to make it look like a traffic accident. (App. 24). Hanlon followed the directions. He carved gouges in the street with a tire iron. He rode over the motorcycle with a police car and he smashed and otherwise damaged Mr. McDuffie's watch and personal property. Later that morning he entered the police pound where the motorcycle had been taken, without authorization, in order to retrieve an oil pan from the bike. He reported false information. (App. 26).

Eleven days later six police officers, including Hanlon, were charged with the death of Mr. McDuffie and the coverup. Pursuant to an agreement between the State and his lawyer, Hanlon took a lie detector test to support his position that he did nothing to contribute to the death of Mr. McDuffie. He passed. The charges of manslaughter were then dropped by the State, but the collective charges of fabrication and tampering with evidence and accessory

after the fact remained. Those charges were then dismissed and never refiled. Hanlon then testified on behalf of the State at the trial of the other officers. (App.22).

Hanlon was not discharged as a police officer. He elected, however, to turn in his badge and assume a civilian status with the Department because he knew "it wouldn't be right for me to go back on the street, even though I legally would have been allowed to pursue [that] career choice."

Years later, Hanlon decided to go to law school. He graduated in May, 2001. He passed the Bar examination. About a year before his expected graduation he filed an application for admission to The Florida Bar. In it, he outlined his participation in the 1979 McDuffie incident. The Florida Board of Bar Examiners ("the Board") investigated the matter and ultimately filed "specifications" against him, which is a formal complaint to deny his admission to The Bar.

The first formal hearing before the Board was held in 2000. A second hearing was held in 2003. The issue in both hearings was Hanlon's *present* fitness to practice law and whether he had been sufficiently rehabilitated from his 1979 misconduct. The burden was on Hanlon.

The First Formal Hearing

The following is a summary of the evidence presented by Hanlon at the first formal hearing before the Florida Board of Bar Examiners:

Hanlon always maintained that his actions on December 17, 1979 and the hours thereafter were isolated, aberrational and not reflective of his character either

before or after that date. At the first hearing in 2000 he offered the following statement:

> I would only ask that you look at, certainly not just this event. This is a key and important event, but what did I do prior to this?
>
> * * *
>
> Prior to this incident I was an effective and efficient law enforcement officer . . . I had received numerous awards for bravery. I've saved people's lives. Subsequent to this event I've gone on and continued going to school. I'm an effective supervisor, risen to a high level within the department in a supervisory position, and have 20 years worth of outstanding and exemplary work history. I have numerous commendations.
>
> * * *
>
> It's not just work. I've been married to the same person for the last 25 years, and have two adult teenagers. I'm actively involved in civic affairs. I have a reputation of dealing fairly and honestly with people.
>
> I have a position of trust at the church that I go to. I helped create an outreach program for those people too sick to go to church, to bring mass and communion to them on a weekly basis.
>
> I've attempted to model my life correctly after this incident. I've asked for forgiveness as a result of this, and I'm at peace with that. I'm not perfect. I've made a terrible, terrible mistake involving this incident. But I believe that the totality of my life's efforts, when viewed as an entire film and not just one snapshot, may bring you to the conclusion that this is someone who 20 years ago did something that was wrong. It was

> inexcusable. But I believe I still have something to give, to offer.

Before December 17, 1979 Hanlon had personally saved several lives, both as a lifeguard and police officer. One of the lives Hanlon saved in his career was of an African American infant, whom he found with a cord wrapped around her neck, by administering CPR.[1] At least one Board member on the second panel in late 2003 expressed surprise at that revelation. Hanlon's history before and after the McDuffie case does not remotely support an inference that he is a bigot, nor does his conduct on that fateful day. The McDuffie case became a racially charged issue, but there was no evidence that Hanlon himself was a racist.

In the many years following the incident Hanlon continued on with the Miami-Dade Police Department, receiving scores of commendations and awards. He has aided many criminal investigations, both in and outside of Florida.

At his local church Hanlon started, coordinated and implemented a project to bring mass and communion to those who are homebound and unable to attend church. He started that project in 1993, long before he filed any application to attend law school. He also taught and teaches young children at his church's religious school and he has provided advanced instruction to middle and high school age students. His pastor has "never pause[d] to

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[1] Hanlon did not know that Mr. McDuffie was black until well after the police activity began, because the motorcyclist was wearing a helmet.

question the sincerity of his faith or motives for his church commitments."

Hanlon also has a love of sport. He is a youth and college football referee. He was given the opportunity years back to coordinate officiating at the local level and saw a need to diversify. When he got there it was basically a "good 'ole boys club" and not reflective of the community. He personally initiated and worked on efforts to recruit female and African-American officials.

Since 1979 Hanlon has led an exemplary life. No adverse issues concerning his character or fitness to practice law have arisen. The Board has not suggested otherwise.

Nationally prominent attorney Neal Sonnett, who represented him in the criminal proceeding, testified that Hanlon was fully rehabilitated and "fully qualified to be a lawyer and an honest and ethical lawyer and one who could be a credit to the Bar." (App. 28). He offered that he was not interested in infecting the Bar with individuals of low moral character.

In response to an inquiry from the panel Chairperson, Sonnett replied:

> I put a lot of time and energy into a very strong belief I have about the need for a strong independent Bar and the need for honest and ethical lawyers. And if I had any doubt that he could be one of those, and deserved to be one of those, and deserved to have ~~the opportu~~nity to be a lawyer, I simply would have refused to come.

Attorney Roberto Fiallo was a Miami-Dade police officer and co-law student with Hanlon. He has been a

police officer for 25 years. He characterized the Central District where the McDuffie incident occurred back in 1979 as "pretty much considered a war zone and that was the mentality, that people just wanted to survive a shift. There was a lot of violence and a lot of crime on the streets and officers were dealing with it as best as they could." He was not involved in the McDuffie incident, but had observed Hanlon conduct police work. He found Hanlon to be, "the most ethical officer that [he] ever worked with." (App. 29).

Elmo Gary, who identified himself as "an African-American living in Liberty City [who knows] first hand the feelings of my neighbors regarding that subject [the McDuffie case]," stated:

> While some may disagree, I recommend Bill Hanlon to become a lawyer. I believe he deserves a second chance. The reason I do is because over the years I have had many conversations and opportunities to work with Mr. Hanlon. I have come to know him as a man of honor and we both share a sincere belief of Christian values.
>
> My association with Bill centers around football officiating. In his role as commissioner of officials in a youth football league and a college organization, I have witnessed a man who encourages and provides opportunities for minority men and women to become involved in football.

Other witnesses also testified for Hanlon and numerous letters were supplied in support of his application.

The Board did not offer a single witness or affidavit against Hanlon, but its counsel cross examined Hanlon on the details of the 1979 McDuffie incident.

The First Board Recommendation to the Supreme Court of Florida

On June 9, 2000, the Board issued its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court of Florida. (App. 20). It found Hanlon's participation in the 1979 McDuffie incident to be individually disqualifying. It found that Hanlon had a heavy burden to demonstrate his rehabilitation and failed to meet that burden, despite the number of years that had passed. Significantly for these purposes, the Board also found as follows:

> Lastly, the Board recognizes that there may be some cases of misconduct for which no amount of rehabilitation would ever be sufficient. The registrant's case, however, is not one of those cases.
>
> If he so chooses, the registrant should be able to establish rehabilitation in the future to allow his admission to the legal profession in Florida. (App. 33).

Hanlon filed a Petition for Review in the Supreme Court of Florida, but it was denied on December 22, 2000, with the following order:

> Upon consideration of the Report and Recommendation filed by the Florida Board of Bar Examiners, it is ordered that the Board's recommendation is approved by the Court and W.F.H., is hereby denied admission to The Florida Bar at this time. (App.35).

The Second Formal Hearing

Based upon the Supreme Court of Florida's adoption of the Board's recommendation that he could be rehabilitated,

Hanlon reapplied for admission after the required waiting period expired. He redoubled his efforts at rehabilitation.

The evidence presented at the second formal hearing on September 12, 2003 continued along the lines of that offered in the first, but went much further. Testimony from 5 witnesses and Hanlon, along with 32 letters, were offered including those presented at the first hearing. The following is an outline and brief description of the types of record evidence of rehabilitation activities engaged in by Hanlon, which was at the rate of about 20 hours per week for years.

Pro Bono Honor Program: Hanlon was awarded a Gold Level Certificate of Distinction for his more than 300 hours of pro bono service for the public interest while in law school.

Broward Legal Aid: Hanlon volunteered and worked on the "Wingate" project which involved a federal lawsuit over a toxic waste dump that bordered an African-American community. He investigated the matter in an effort to document intentional race discrimination in the choice of location for the dump. His efforts have been lauded by many public officials and private citizens.

Guardian Ad Litem: Hanlon first enrolled in a 40 hour training program. Thereafter, he was appointed guardian for three children. He helped in the termination of parental rights for one child due to felonious acts by the mother. In another case he helped turn around the life of a Cuban-African-American child after his mother committed suicide. The child has gone from failing grades to A's and B's. He now wants to join the Air Force. The third case also involved termination of parental rights as well and he was instrumental in protecting the rights of a child.

County Court Mediation and Juvenile Arbitration: Volunteer mediator for County Court civil division.

Honor Court Prosecutor. Hanlon substantially revised the Standard Operating Procedures manual for prosecutors and prosecuted Honor Code Violations.

Teen Court: Hanlon sits as a judge in the 17th Judicial Circuit (Broward County, Florida) Teen Court Program. Over the past 20 months Hanlon has volunteered many hours participating in this diversion program.

Archdiocese of Miami Metropolitan Tribunal: Hanlon was involved in a 2-year training program and was certified by the Judicial Vicar in 2002 as an advocate before the tribunal in connection with Catholic Church's marriage annulment process.

Eucharistic Minister in Catholic Church: Hanlon participates in a ministry of weekly assistance to the presiding priest at St. Mark Church in distribution of Communion at morning services. He has been involved in this for the past 11 years and duties included coordinating 30 others in this effort.

College and Youth League Football Commissioner: Hanlon has consistently enforced a non-discrimination policy for feeder program of football officials to work Division I AA in Florida. He has reached out to young African-Americans aspiring to become officials.

Florida High School Activities Association and the Broward County Athletic Association: Hanlon was and is involved in youth athletic programs.

Martin Luther King Jr. Celebration Event: Hanlon supplied officials for sporting events and helped organize the event.

Apology to the McDuffie family: Hanlon drafted and delivered a letter to an intermediary to give to the family, if the intermediary thought appropriate. The family was made aware of apology.

Other Civic Activities: Hanlon assisted in securing alternative treatment options for a juvenile African-American convicted in the homicide of a playmate.

Some of the testimonial evidence from the September 2003 hearing is excerpted below:

Irma Pulliam was one of the foster parents that Hanlon assisted while volunteering as a Guardian Ad Litem. (App. 10). She testified as follows concerning Hanlon's involvement as a guardian for a young boy of a drug addict mother and his successful effort to terminate parental rights and have the boy (who was not developing the way he should in that environment) adopted by his foster family:

> (On direct) We are eternally grateful to Bill because this little boy is now in kindergarten. He is doing very well. We don't see any emotional scars, you know. We're ready for whatever. And because of Bill's work even at our age and we never planned on doing it, permanency was with us and Christian is our child.
>
> Q. What do you think would have happened had Bill not gotten involved?
>
> A. Christian would have still continued to be victimized by the system. You know, none of us

really want children taken from their parents but sometimes for the protection of the child that's what has to happen.

* * *

Q. Knowing that about his past, based upon your experience with him and with that knowledge, do you have an opinion of his present fitness and character to be admitted to the Florida Bar to perform the duties of a lawyer?

A. I think Bill Hanlon would make a wonderful attorney, but I think the citizens of Florida are the ones that are going to benefit from that. I think he is kind. He is compassionate. He is thorough. I think he is a good man and I feel that I'm a good judge of character and I think it would be a shame for the citizens of Florida for him not to be admitted to the Bar.

(On Cross by the Board) Q. When Mr. Hanlon discussed his prior problems, did you understand that was his involvement or something else?

A. Yes, he told me. He told me. You know, and my response to him was, you know, we've all done things in our lifetime that if we could redo them we would and things that we're not real proud of have done, but there comes a time when it either has to be put behind you. I mean you can't go on being sorry for the rest of your life. And Bill Hanlon is a good man and I'm eternally grateful for what he has done, not [only] for my child but for a lot of children.

Sharon Bourassa, Esq., supervising attorney at Broward Legal Aid Society testified, in part, as follows:

(On direct) Q. Based upon your interaction with him and your knowledge of his character, do you believe he has the present character and fitness requirements necessary to become a member of the Florida Bar?

A. Absolutely. The reason I say absolutely, and a lot of people use the word absolutely. But like I said, at young ages when we are young we do things that are crazy. All of us do, myself included, and we have all done things.

I have seen many attorneys. I want to let you know I work with many attorneys. They give them to me who need to be admitted to the Bar, who have been suspended by the Bar, disbarred and they work with me and not many – In fact, I really would not have put myself out for too many people that have come down and to testify and I have not testified for any of the others. I felt very, very compelled to testify for Bill and I've handled many of these attorneys. He has evolved. He has evolved. We all evolve spiritually. That's what our duty is here on earth, I believe, to evolve, to become in the image of likeness of God and I think Bill has evolved. He is there. When you are there, you are not going to do anything to hurt – I'm sorry, if it religious you're not going to do anything to hurt your maker. You're just not. It's not there. You're different people. We're different people. I would hire him in a second. If I have an opening at Legal Aid and you guys put him in, I'll hire him in a second.

Virgil Valdez, a long time African-American resident and longtime educator in Miami – he holds a master's degree – testified by videotape deposition as follows:

(On direct) Q. How much are you aware of the details of his involvement in the Arthur McDuffie matter?

A. I'm keenly aware. I'm keenly aware. As a matter of fact, my daughter is an attorney. And she understands the – she has made me aware of the high standards that it requires to become a member of the Bar. My daughter is – is president of the State of Florida African-American Bar. And so – and we've talked about this several times. Although she never met Bill, she practices in Orlando. But from what I've told her, and we've discussed this on numerous – on many, many occasions, and she said to me, "Daddy, from what you've told me, I would really want to – to testify for him, also."

Q. Do you have an opinion on his character and fitness to practice law, to represent other people and to have them repose their trust in him?

A. Again, if I had to recommend Bill as an attorney, I would gladly do that, but Bill has shown me nothing but integrity. He's shown me nothing but the fact that he is – he's given back to the community. He has shown me that he has – he has – he's begged for forgiveness. He has repented. I'm just – as I said, I admire Bill. I have tremendous admiration for Bill.

Q. Do you have any hesitation in making your recommendation to the Board that he ought to be admitted?

A. None whatsoever. I just regret that I can't be there in person. I have no regrets whatsoever. I would highly recommend Bill.

The Board presented no evidence against Hanlon, but its counsel, again, cross-examined him concerning the events in 1979.

Total Evidence Presented at September 12, 2003 Hearing

	Bar Examiners	Hanlon
Sworn character witnesses	0	5
Letters regarding character	0	32

Second Report and Recommendation of the Board

Despite what appeared to be an overwhelming case for rehabilitation and present fitness to practice law, the Board again denied Hanlon's admission on the basis that he had still not done enough to show he had been rehabilitated. (App.3).

Petition for Review and Florida Supreme Court Decision

Following the disappointing recommendation by the Board, Hanlon again filed a petition for review in the Supreme Court of Florida. He expressly raised the issue of federal due process in his petition. This time the court set the matter for oral argument and the case was argued on October 4, 2004. The court then held the matter under advisement for 18 months. Finally, on April 20, 2006, after Hanlon filed a motion for status, the court, in a one paragraph opinion that made no citations to authority or the facts – surprising if for no other reason than the court has rarely granted oral argument in an admissions case – held that, "under the totality of the circumstances, the grievous nature of the misconduct mandates that W.F.H. not be admitted to the Bar now or at any time in the future." (App. 1).

Three justices concurred and gave an even briefer statement:

> I concur only in this result. However, I believe that the Board erred and we erred in not making this decision at the time of W.F.H.'s first petition, rather than allowing W.F.H. to reapply when a reapplication was futile. I regret this for reasons of fundamental fairness. (App. 1-2).

Hanlon moved for rehearing, pointing out, *inter alia*, that federal due process principles foreclosed the court from retreating from its earlier holding that he could be rehabilitated. (App. 37). He underscored that his federal constitutional rights were violated because he had no warning that he could be forever foreclosed from admission and even pointed out some of the evidence he could have presented if he had notice that it was an issue. Nevertheless, the court denied his motion for rehearing. (App. 36).

REASONS FOR GRANTING THE PETITION

The Supreme Court of Florida has forever precluded Hanlon's admission to The Florida Bar in gross violation of his procedural and substantive due process rights. The court ruled that Hanlon can never be admitted to The Florida Bar solely because of misconduct occurring in 1979, even though 6 years earlier it held that the same 1979 conduct was not permanently disqualifying. Such a reversal of field without affording Hanlon any notice or opportunity to address that question was a gross and disturbing violation of procedural due process. The court changed the rules of the game after it was played and

after the court recognized that Hanlon met all of its standards for rehabilitation.

Hanlon never had any opportunity to address and meet the charge – in his re-application process – that his prior misconduct was permanently disqualifying. *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S.Ct. 1175 (1963) (bar applicant entitled to notice and a hearing on grounds for denial of admission) and *In re: Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222 (1968) (lawyer cannot be disbarred on ground not raised in advance of hearing). Hanlon had every right to rely upon the year 2000 ruling by the Board and the Supreme Court of Florida that he could be rehabilitated. He thus focused his attention exclusively on the issue of rehabilitation, as directed.

In fact, three of the seven justices on the court lamented that they, "regret . . . for reasons of fundamental fairness" that Hanlon was misled. (App. 1-2).[2] One wonders if the reason it took 18 months after oral argument for the court to release its order was that it took that long to convince 3 of the justices to issue a concurrence instead of a dissent, to permit the opinion to have the facade of unanimity.

Hanlon's substantive due process rights were equally violated. This is the 21st century version of *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 77 S.Ct. 752 (1957). Like, *Schware*, this case involves the

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[2] "Fundamental fairness" is synonymous with "due process." This Court has stated that, "denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." *Lisenba v. People of State of California,* 314 U.S. 219, 236, 62 S.Ct. 280, 290 (1942).

legal relevancy of remote misconduct on the present character and fitness to practice law. It has been more than 26 years since Hanlon's participation in the McDuffie incident coverup and the riots in Miami that followed the acquittal of other officers; in *Schware* the conduct deemed disqualifying occurred 15 to 20 years earlier. In neither case was the applicant ever tried or convicted of a crime, although both were charged, with the charges later dropped.[3] In both cases the applicant was, however, convicted by the public at large for his association with and participation in notorious events in American history. Mr. Schware was a member of the Communist Party and participated in demonstrations that got him arrested several times "on suspicion of criminal syndicalism" and for alleged violations of the Neutrality Act of 1917. He had also used aliases. Here, Hanlon was involved in the coverup of a notorious crime. His participation was completely out of character and nothing else in his background raised any question about his present fitness to practice law. To the contrary, as in *Schware*, the evidence of his good moral character was undisputed and overwhelming and both the Board and the Supreme Court of Florida in 2000 ruled that his participation in the coverup was not forever disqualifying.

This Court took great care in *Schware* to give guidance to the states on the substantive due process requirements in bar admission cases. The Supreme Court of

[3] In no way do we attempt to minimize Hanlon's grievous bad judgment and misconduct back in 1979. It is indefensible. The import of this fact, however, is that Florida's rule that precludes persons who have been convicted of a felony and who have not had their civil rights restored from applying for admission is inapplicable.

Florida has completely disregarded those directions and arbitrarily determined – in contravention of its earlier ruling – that Hanlon could never be rehabilitated despite overwhelming and uncontroverted evidence that he was, in violation of the Due Process Clause of the U.S. Constitution.

I. CERTIORARI REVIEW SHOULD BE GRANTED BECAUSE THE SUPREME COURT OF FLORIDA HAS GROSSLY VIOLATED HANLON'S DUE PROCESS RIGHTS IN THE BAR ADMISSION PROCESS

A. The Supreme Court of Florida's decision to permanently deny Hanlon admission to practice law on grounds that it previously held were not permanently disqualifying violated Hanlon's procedural due process rights.

In *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S.Ct. 1175 (1963), this Court held that due process required that a bar applicant be given notice of and a hearing on the grounds for his rejection. Likewise, *In the Matter of Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222 (1968), this Court held that where an attorney had no notice that a particular fact would be considered a disbarment offense until after he had testified on all other relevant matters in his disbarment proceeding, it was a violation of due process to disbar him on those undisclosed grounds. Thus, whether one be a bar applicant or a practicing lawyer, he/she is entitled, as a matter of federal due process, to be advised of the specific charges against him/her and an opportunity to be heard on those matters.

In *Lankford v. Idaho*, 500 U.S. 110, 111 S.Ct. 1723 (1991), this Court further held that it is a violation of due process to sentence a convicted murderer to death where the state did not seek the death penalty and there was no discussion of it during the sentencing hearing. Even though the judge had the power to sentence the defendant to death without the state's recommendation, defense counsel was not on notice that the judge was actually debating that issue in his mind. The majority stated:

> If defense counsel had been notified that the trial judge was contemplating a death sentence . . . presumably she would have advanced arguments that addressed these circumstances; however, she did not make these arguments because they were entirely inappropriate in a discussion about the length of petitioner's possible incarceration.

500 U.S. at 122, 111 S.Ct. at 1730.

While we do not trivialize the distinction between someone's life and someone's chosen vocation, Hanlon has been given a professional "death sentence" in this case. For that to occur under *Lankford*, due process required that he be advised that the Supreme Court of Florida was considering that option and he be given an opportunity to address and be heard on that issue. That did not occur. Instead, Hanlon was *affirmatively* advised by the Board *and the court* that his participation in the McDuffie incident was *not* permanently disqualifying. In its June 9, 2000 Report and Recommendation that was approved by the court, the Board stated as follows:

> Lastly, the Board recognizes that there may be some cases of misconduct for which no amount of rehabilitation would ever be sufficient. The registrant's case, however, is not one of those cases.

> If he so chooses, the registrant should be able to establish rehabilitation in the future to allow his admission to the legal profession in Florida. (App. 33).

Accordingly, Hanlon appropriately did not prepare for or present a case to address what he was squarely told was not an issue.

The procedures used to permanently bar Hanlon's admission into The Florida Bar is a textbook violation of *Willner*, *Ruffalo* and *Lankford*. Not only was he not advised in advance of the ultimate basis for the permanent denial of his admission to practice law in Florida, but he was affirmatively misled by the Board and, sadly, by the Supreme Court of Florida, when they respectively recommended and held in 2000 that his participation in the coverup of the McDuffie incident was not permanently disqualifying.[4] They expressly encouraged him to do more to rehabilitate himself and then reapply. He relied on their instructions. The Supreme Court of Florida then totally blind-sided him and disregarded its prior holding by concluding that his 1979 misconduct was permanently

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[4] In fairness to the Board, while it no doubt approved of the final result, it was as much surprised at the reason as was Hanlon. It never argued that the 1979 conduct was permanently disqualifying. In fact, the Board's lawyer who argued this case wrote in a law review in 1994 that, "if the evidence of rehabilitation is convincing, then admission to the Bar is appropriate *regardless of the seriousness of the past misconduct.*" Thomas A. Pobjecky, *The Florida Board of Bar Examiners: the Constitutional Safeguard Between Attorney Aspirants and the Public*, 18 Nova L. Rev. 1313, page 1329 (1994)(Emphasis ours). Before this case, conventional wisdom in Florida, as we show more fully below in section B, was that everyone was redeemable, although there was a sliding scale for showing rehabilitation depending upon the seriousness of the prior misconduct.

disqualifying. This was done in the absence of any new or different adverse information or revelations concerning the events of 1979.

Were Hanlon given prior notice and an opportunity to be heard and present evidence on the issue of permanent disqualification, he could have spent more time developing the facts from 1979 to show, contrary to the repeated insinuation by the Board on a very scant record, that he did not cause or contribute to the death of Mr. McDuffie. He could also have presented expert testimony on the human condition and how an overwhelming majority of the current Bar would likely have acted as did Hanlon, if placed in similar circumstances. We can only speculate what else he could have done had he known that the court was considering that draconian action. That is why due process commands that he be placed on fair notice of the basis for his permanent exclusion from the legal profession, if that is a result under consideration.

B. The Supreme Court of Florida arbitrarily denied Hanlon admission to The Florida Bar in violation of his substantive due process rights.

In *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 77 S.Ct. 752 (1957), this Court held that a bar applicant's past membership in the Communist Party and his prior arrest record and use of aliases 15 years earlier could not be said to raise substantial doubts about his *present* good moral character and that refusing him the right to qualify for the practice of law constituted a denial of due process. Recognizing that determining one's character is a shadowy and imprecise process at best, this Court still determined that principles of due process required

that there be some objective basis in the record for concluding that a person is *presently* unfit to practice law.

Mr. Schware disclosed in his December 1953 bar application that he had been a member of the Communist Party, that between 1933 and 1937 he had used certain aliases and that he had been arrested on several occasions prior to 1940. His arrests were for violation of the Neutrality Act of 1917. After he had been refused permission to sit for the bar examination, he was granted a hearing. At that hearing he presented undisputed and overwhelming evidence of good moral character. The board called no witnesses and introduced no evidence. The reason given for denying Mr. Schware the right to sit for the bar examination was that his membership in the Communist Party, "together with his other former actions in the use of aliases and record of arrests, and his present attitude toward those matters, were the considerations upon which" his application was denied. Id. at 238, 756.

In this case Hanlon's misconduct occurred more than 26 years ago, before most of today's present applicants for admission to state bars were even born. Like Mr. Schware, there was nothing in Hanlon's character for 26 years before and after the McDuffie incident that reflected adversely on his fitness to practice law. As in *Schware*, the Board did not call a single witness or introduce a shred of evidence against Hanlon on the question of his present moral character and fitness. Also as in *Schware*, Hanlon presented an overwhelming case of rehabilitation and good moral character. He did everything that the Board expressly recommended in its June 2000 Report that he do to further his rehabilitation effort, and more. Yet, in 2006 the Supreme Court of Florida viewed Hanlon's 1979

participation in the McDuffie death coverup as so heinous, that it did not consider his rehabilitation efforts one bit.

In holding that New Mexico's refusal to allow Mr. Schware to sit for the bar examination was a violation of the Due Process Clause of the Fourteenth Amendment, this Court stated that,

> There is nothing in the record which suggests that Schware has engaged in any conduct during the past 15 years which reflects adversely on his character. The New Mexico Supreme Court recognized that he 'presently enjoys good repute among his teachers, his fellow students and associates and in his synagogue.' [All his character witnesses] gave testimony that he is a good man, a man who is imbued with a sense of deep responsibility for his family, who is trustworthy, who respects the rights and beliefs of others. From the record it appears he is a man of religious conviction and is training his children in the beliefs and practices of his faith. A solicitude for others is demonstrated by the fact that he regularly read the Bible to an illiterate soldier while in the Army and law to a blind student while at his University of New Mexico law school. . . . He demonstrated candor by informing the Board of his personal history and by going to the dean of the law school and disclosing his past. The undisputed evidence in the record shows Schware to be a man of high ideals with a deep sense of social justice. Not a single witness testified that he was not a man of good character.

353 U.S. at 239-240, 77 S.Ct. at 757.

This Court accordingly determined that the remote misconduct of Schware did not "raise substantial doubts

about his present good moral character. There is no evidence in this record which rationally justifies a finding that Schware was morally unfit to practice law." *Schware* at 247, 760.

In the instant case, Hanlon was involved in conduct 26 years earlier but nothing in his behavior since then reflects negatively on his character or fitness to practice law. Quite the contrary, his life since then has been an exemplary one of service to others in his community and his church. Like Joseph Conrad's fictional Lord Jim, the 26 year-old Hanlon made one bad decision in a moment of stress; then after reflection admitted his error, took corrective action, and has spent a lifetime making up for it.[5]

Both the Board and the Supreme Court of Florida held in 2000 that Hanlon's prior remote conduct was not so heinous that it would permanently bar his admission to the practice of law.[6] (App. 33, 35). In other words, both concluded that he could be rehabilitated.[7]

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[5] One would think that Hanlon possessed just the kind of character any bar would be looking for. He has been shown to be more committed than many to ensure that justice is served precisely because of his past experiences and his lifetime of atonement. Some, however, refuse to forgive and forget the events of 1979 that led to the riots in Miami. They are intent on continuing to punish those involved. Retribution is not, however, a criterion for denying one the privilege to practice law any more than is race, political affiliation or gender.

[6] Thus, Hanlon's case was placed on the same plane as Schware's even though one could make an argument that Schware's misconduct was more benign.

[7] In its most recent findings the Board concluded that Hanlon had still not fully taken responsibility for his prior misconduct and was thus not rehabilitated. (App. 12-14). Even the Florida justices did not buy that conclusion during oral argument, several believing the Board was bogged down by semantics. Thus, if Hanlon was rehabilitated – as the

(Continued on following page)

That holding in 2000 was consistent with *Schware* as well as a fully developed body of law in Florida on the issue. See, e.g., *In re Diez-Arguelles*, 401 So.2d 1347 (Fla. 1981) (twice convicted felon for cocaine sales (approximately 15 such sales) proved compelling case of rehabilitation by acting in an exemplary fashion for eight years following convictions);[8] *Florida Board of Bar Examiners re R.B.R.*, 609 So.2d 1302 (Fla. 1992) (Board found that 11 year passage of time between conviction for using a telephone to commit a felony (drug trafficking) was a sufficient length of time to make incident not disqualifying in and of itself); *Florida Board of Bar Examiners re N.W.R.*, 674 So.2d 729 (Fla. 1996) (misrepresentation to police officer regarding applicant's driving with a suspended license did not render him unfit given that four years had passed); *Florida Board of Bar Examiners re D.M.J.*, 586

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undisputed evidence proved – they had to find another way to deny him admission. Their way was to simply change the rules after the game was played, in gross violation of federal law. If the court were a legislature, we would argue that it passed an illegal *ex post facto* law.

[8] The Supreme Court of Florida had this to say in *Diez-Arguelles*:

> Petitioner's accomplishments since the time of his arrest are persuasive evidence of rehabilitation. . . . We note that the board presented nothing contravening the evidence presented on petitioner's behalf. No act, no incident, no omission reflecting ill on petitioner was shown. No testimony or letter questioning his character was produced. Nothing in the record contradicts petitioner's assertion of his rehabilitation, and we accept it as genuine.
>
> * * *
>
> One who works diligently at rehabilitation, and who can show that he has in fact been rehabilitated, should not be denied the privilege of practicing law solely because of a past mistake which is no longer relevant to the issue of his admission to the bar.

401 So.2d at 1348-1350.

So.2d 1049 (Fla. 1991) (Applicant charged with conspiracy to import cocaine 12 years earlier, but led exemplary life since. The court held that, "we note that the offense in question occurred more than twelve years ago, and there is no indication of conduct which would warrant disqualification since that time."); *In re Application of VMF*, 491 So.2d 1104 (Fla. 1986) (guilty plea 10 years earlier to marijuana possession and initial failure to disclose same on his application. Held admitted because delay in admission of over 1½ years is enough punishment.); See generally Charles A. Stampelos, *The Florida Board of Bar Examiners: The Use of and Rehabilitation at Formal Hearings*, 74 The Florida Bar Journal 54, 55 (May 2000).

Florida has never before in the bar admission process held that a man or woman was unredeemable. To the contrary, Florida jurisprudence heretofore has been as enlightened as has any state on the issue of rehabilitation in the bar admission process.[9] Florida also has no *per se* rule against admission except for convicted felons whose civil rights have not been restored, which is inapplicable here.

The decision to permanently bar Hanlon from practicing law in Florida was as arbitrary and capricious a decision as any on record. The Supreme Court of Florida – in the face of decades of its own precedent to the contrary and its own prior holding in this very case – determined

[9] Not even the Supreme Court of Arizona, when faced with far more heinous misconduct by a bar applicant – in that case an admitted and convicted murderer – concluded that he was not capable of rehabilitation. *In the Matter of Hamm*, 21 Az. 458, 123 P.3d 652 (2005). It had no *per se* rule but instead concluded that his lack of candor, among other things, showed he was not rehabilitated.

without warning or explanation that Hanlon's conduct in 1979 was unredeemable. Respectfully, the undisputed evidence was overwhelming that Hanlon was rehabilitated and presently fit to practice law, thus making the court's decision to deny Hanlon's admission to The Florida Bar a violation of the Fourteenth Amendment.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: September 18, 2006.

Respectfully submitted,

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Counsel of Record
RICHARD C. MCFARLAIN
Attorneys for Petitioner

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Supreme Court of Florida

THURSDAY, APRIL 20, 2006

CASE NO.: SC04-185

FLORIDA BOARD OF BAR EXAMINERS

RE: W.F.H.

Upon consideration of W.F.H.'s Petition for Review filed in the above cause, based on the totality of the circumstances, the findings of fact and conclusions of law, the recommendation of the Florida Board of Bar Examiners that W.F.H. not be admitted to The Florida Bar is approved. This Court concludes that the total circumstances and underlying facts of the instant case, which involve misconduct by a sworn law enforcement officer, are so egregious and extreme, and impact so adversely on the character and fitness of W.F.H., that the recommendation of the Florida Board of Bar Examiners must be approved. We further conclude that under the totality of the circumstances, the grievous nature of the misconduct mandates that W.F.H. not be admitted to the Bar now or at any time in the future. Accordingly, W.F.H.'s petition is hereby denied.

PARIENTE, C.J., and ANSTEAD, LEWIS and QUINCE, concur.

WELLS, J., concurs in result only with an opinion, in which CANTERO and BELL, JJ., concur.

WELLS, J., concurring in result only.

I concur only in this result. However, I believe that the Board erred and we erred in not making this decision

at the time of W.F.H.'s first petition, rather than allowing W.F.H. to reapply when a reapplication was futile. I regret this for reasons of fundamental fairness.

CANTERO and BELL, JJ., concur.

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: APPLICATION OF WILLIAM F. HANLON III FOR ADMISSION TO THE FLORIDA BAR	))))	File No. 89481

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

FINDINGS BACKGROUND

The applicant, William F. Hanlon III, was born on April 4, 1952, in Jersey City, New Jersey. He attended Saint Thomas University from September 1974 to December 1975, when a Bachelor of Arts degree was awarded him. Applicant Hanlon entered the Nova Southeastern University Shepard Broad Law Center on August 25, 1997, and the degree of Juris Doctor was conferred upon him on December 31, 2000.

The applicant executed a student registration on January 22, 1998. He converted it to an Application for Admission to The Florida Bar by refiling his application on June 14, 2002. The applicant was administered and successfully completed the General Bar Examination in February 2001. He successfully completed the Multistate Professional Responsibility Examination in March 2002.

During the course of the character and fitness investigation conducted by the Board, certain items of information that reflected adversely upon the applicant's character and fitness under the provisions of Rules 2-12,

3-10, 3-11, and 3-12 of the Rules of the Supreme Court Relating to Admissions to the Bar (hereinafter designated as the "Rules") came to the Board's attention. An extensive investigation of the applicant's activities in question was undertaken.

Upon review of the file, the Board elected to call the applicant for a hearing. The applicant appeared before a Division of the Board for an investigative hearing on April 9, 1999. Following that hearing, Specifications were prepared and served on the applicant.

The applicant appeared at a formal hearing on March 25, 2000, and was represented by Andrew S. Berman, Esquire.

The Specifications previously served upon the applicant read as follows:

Specification 1

That you engaged in the following illegal, unprofessional, and/or improper behavior:

(A) That on or about December 17, 1979, you were a police officer with the Miami-Dade Police Department. That on this date you were involved in a high speed chase of a motorcyclist, Arthur McDuffie, who had committed a traffic violation.

That after stopping, Mr. McDuffie was physically restrained and apprehended by you and/or other officers. That after being handcuffed, Mr. McDuffie was struck in the head by another officer and received an injury which led to his death some days later.

That after Mr. McDuffie was struck in the head, you and other officers conspired to make it falsely appear that Mr. McDuffie had been injured in a motorcycle accident in order to cover-up police misconduct, including the intentional infliction of the injury on Mr. McDuffie by a police officer. That in furtherance of this cover-up, you drove a police squad car over Mr. McDuffie's motorcycle and used a tire iron to gouge the roadway. That you also attempted to destroy Mr. McDuffie's watch.

That in an Information dated February 15, 1980 you were charged with manslaughter, manslaughter by unnecessary killing, aggravated battery, tampering with or fabricating physical evidence, and accessory after the fact. That the charges against you were eventually dismissed, you were granted immunity, and you testified on behalf of the government against the other police officers.

That a civil lawsuit was filed against you and others by the Personal Representative of the Estate of Arthur McDuffie. That this suit against you was settled before trial.

(B) That you had been involved in prior incidents where civilians and/or persons in custody were unnecessarily mistreated.

Specification 2

That you filed with the Board an Application for Admission to The Florida Bar, the accuracy of which was duly sworn to under oath by you on January 22, 1998. That Item 19.a. asks the following question:

> In your entire life, have you ever been arrested, detained or restrained, taken into custody or accused formally or informally of a felony, whether or not the charge was later reduced to a misdemeanor or other lesser charge? If yes, provide the information requested below and include a complete explanation of the circumstances leading to the arrest and the subsequent action taken by the authorities.

That you responded "yes" to this item and included the following explanation which was incorporated by reference into your sworn Application for Admission to The Florida Bar:

[Case No. 79-21601-C 11th Circuit – Miami-Dade County, Fl.]

> On December 17, 1979, while on-duty with the Miami-Dade Police Department, several police officers were involved in a high-speed chase. The motorist was eventually stopped. During the actual arrest, the subject resisted and force was used. My participation in the physical arrest involved pulling the motorist from behind with my baton around his neck forcing him to the ground and applying handcuffs. After being placed in custody, another officer struck the prisoner in the head with a metal flashlight. A senior officer on the scene directed the fabrication of a traffic accident to explain the injury. The prisoner died three days later.
>
> On December 28, 1979, six officers including myself, were charged in connection with the death and cover-up. A few weeks later charges were dropped by the Dade State

> Attorney's Office, immunity was conferred, and I became a State witness.
>
> In 1980, the Court ordered the expungement (attached) of my arrest record.
>
> A certified copy of a Court Order to release the records to The Florida Bar is enclosed.

That this sworn explanation by you was false, misleading or lacking in candor in that you failed to disclose that you actively participated in the attempted cover-up as more particularly described in Specification 1 above.

Based on the record produced at the March 2000 formal hearing, the Board found Specification 1(A) to be proven and individually disqualifying for admission to The Florida Bar. By its Findings of Fact, Conclusions of Law, and Recommendation, dated June 9, 2000, the Board recommended that the applicant not be admitted to The Florida Bar.

The applicant subsequently petitioned the Supreme Court of Florida for review of the Board's findings and conclusions. By Order dated December 22, 2000, the Court denied the applicant's petition and approved the Board's Findings of Fact, Conclusions of Law, and Recommendation.

The applicant executed a reapplication for admission to The Florida Bar on June 14, 2002. Following the completion of its updated background investigation, the Board scheduled the applicant's case for a formal rehabilitation hearing.

The formal hearing on the issue of the applicant's rehabilitation was held on September 12, 2003, in Coral

Gables, Florida. The applicant was represented by Andrew S. Berman, Esquire.

FINDINGS OF FACT

Because this is a rehabilitation case with the Board having previously found the applicant to be unqualified for admission to The Florida Bar, the applicant is required to establish his rehabilitation by clear and convincing evidence. The applicant's burden is mandated by Rule 3-13 of the Rules of the Supreme Court Relating to Admissions to the Bar. Rule 3-13 provides:

> **3-13 Elements of Rehabilitation.** Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct which bears adversely upon such person's character and fitness for admission to the Bar shall be required to produce clear and convincing evidence of such rehabilitation including, but not limited to, the following elements:
>
> (a) strict compliance with the specific conditions of any disciplinary, judicial, administrative or other order, where applicable;
>
> (b) unimpeachable character and moral standing in the community;
>
> (c) good reputation for professional ability, where applicable;
>
> (d) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative or other proceeding;
>
> (e) personal assurances, supported by corroborating evidence, of a desire and intention to

conduct one's self in an exemplary fashion in the future;

(f) restitution of funds or property, where applicable;

(g) positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar.

The applicant called several live witnesses during his formal hearing presentation in support of his rehabilitation. Robert Fiallo testified on the applicant's behalf. (Transcript of the September 12, 2003 formal hearing at 12-16 hereinafter designated by "T" followed by the page number) Mr. Fiallo is a police officer and attorney for Miami-Dade Police Department. He has worked for the department for about 28 years and he has known the applicant for that entire period. Mr. Fiallo also attended law school with the applicant. If the applicant were admitted to the practice of law, Mr. Fiallo would not hesitate to go to the applicant for advice for a serious legal matter.

Stevan N. Torres also testified on the applicant's behalf. (T 17-26) He is a special agent with the FBI. He met the applicant in 1982. Mr. Torres would describe their relationship "as best friends." They both share a common endeavor involving officiating at sporting events. Mr.

Torres believes that the applicant "would be an asset to the Florida Bar."

Irma Pulliam testified on the applicant's behalf. (T 27-33) She is a foster parent. She met the applicant in January 2001 when the applicant was appointed the Guardian Ad Litem for one of her foster children. Ms. Pulliam testified that the applicant "devoted a lot of time and energy" to the child's case resulting in a positive difference in the child's life. She believes the applicant "would make a wonderful attorney."

Sharon Bourassa was the applicant's last live character witness. (T 34-51) She is an attorney and works for Legal Aid Service of Broward County as the director of special projects. She has known the applicant since 2001 as a volunteer at the Legal Aid Service. Specifically, the applicant assisted Ms. Bourassa on one of her major cases. The case was one of racial discrimination based on a municipal landfill and incinerator located in an African-American community. The applicant has also worked on an inmate program. She believes absolutely that the applicant has the character and fitness to be a member of The Florida Bar.

The applicant also played the videotaped deposition of Virgil Valdez. (T 27) The transcript of the deposition was introduced into the record. (Applicant's Exhibit 2) Mr. Valdez is a teacher with the Miami-Dade County School System. He is also an official at college football games in the Atlantic Coast Conference. Mr. Valdez met the applicant ten years ago. He and the applicant have worked together on a program to provide access to college officiating to minorities. Mr. Valdez understands the high standards for admission to the bar in that his daughter is an

attorney in Orlando and also the president of the African-American Bar Association for Florida. Mr. Valdez has "tremendous admiration" for the applicant and recommends his admission without any hesitation.

The applicant introduced into evidence a statement pertaining to his rehabilitation supported by letters of recommendation and documents. (Applicant's Composite Exhibit 1) Lastly, the applicant testified on his own behalf and responded to questioning from the attorney for the Office of General Counsel and members of the Board. (T 52-102)

During his testimony, the applicant discussed his involvement in community service. The applicant has continued his involvement with the Guardian Ad Litem program. He has volunteered his time with Legal Aid Service. He has served as a judge with the Teen Court program. The applicant is a Eucharistic minister for his church. He is also involved in officiating for sporting events and serves as a commissioner for a youth league association and a college association.

Having heard the testimony of the applicant and his witnesses, having considered the exhibits received into evidence at the formal hearing, and having heard argument of the attorneys, the Board renders the following findings as to each of the seven elements listed in the above-quoted rule of the Court:

(a) Strict compliance with the specific conditions of any disciplinary, judicial, administrative or other order, where applicable.

Based upon the record before it, the Board finds that this element of rehabilitation was not applicable to the applicant's case.

(b) Unimpeachable character and moral standing in the community.

Based upon the record before it, the Board finds that the applicant has not presented sufficient evidence of this element of rehabilitation. In reaching this finding, the Board recalls the applicant's failure to accept full responsibility for his past actions at the first formal hearing. The Board noted this failure in the following language from the June 2000 Findings of Fact, Conclusions of Law, and Recommendation:

> The Board also observes that the registrant is unable or unwilling to accept full responsibility for his actions, an essential step for a truly reformed individual. For example, the registrant testified that he did not kill Mr. McDuffie. Yet, the facts clearly show that the registrant directly partook in the events leading to Mr. McDuffie's death. The registrant subdued him; the registrant handcuffed him; and then the registrant stood and watched as another officer delivered deadly blows to the head of Mr. McDuffie.

(Board's Exhibit 3 at 13)

During his recent formal hearing, the applicant again exhibited a reluctance to accept responsibility for his participation in the events that caused the death of Mr. McDuffie. For example, during his direct examination, the applicant provided the following description of his past disqualifying conduct: " . . . I violated my oath of office when I participated actively in a conspiracy to cover up a

crime which had occurred in the beating and subsequent death of Arthur McDuffie." (T 53)

In response to questioning by the attorney for the Office of General Counsel, the applicant again stated: " . . . I participated in the coverup. But no, I did not physically cause his death. . . . " (T 70)

The applicant elaborated:

* * *

> . . . I was involved in taking [Mr. McDuffie] down lawfully at the time.
>
> What I did was with regard to physically restraining him and handcuffing him was lawful. What took place immediately thereafter, including the coverup, including the lies, including the tampering with the evidence, I was fully involved with and did participate in that. I hope that answers it.

* * *

(T 71)

Later in the hearing, a Board member specifically asked the applicant if he acknowledged any role in the death of Mr. McDuffie. The Board member prefaced his question by telling the applicant that he was not asking him "to split hairs." (T 85) It was after this pointed questioning that the applicant finally acknowledged his active role in the death of Mr. McDuffie. (T 85-86) The applicant's current attitude about the prior offenses undermines his assertion of a current fitness to practice law. Based upon the record before it, including the opportunity to observe the applicant's demeanor, the Board is unconvinced if the

applicant has now genuinely accepted his responsibility in the death of Mr. McDuffie.

(c) Good reputation for professional ability, where applicable.

Based upon the record before it, including specifically the favorable job performance evaluations introduced into evidence by the applicant, the Board finds that the applicant presented sufficient evidence to establish this element.

(d) Lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative or other proceeding.

Based upon the record before it, including specifically the testimony of the applicant, the Board finds that the applicant has presented sufficient evidence to establish this element.

(e) Personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future.

Based upon the record before it, including specifically the letters of recommendation introduced into the record by the applicant and the testimony of the several character witnesses presented at the formal hearing, the Board finds that the applicant has presented sufficient evidence to establish this element.

(f) Restitution of funds or property, where applicable.

Based upon the record before it, the Board finds that this element of rehabilitation was not applicable to the applicant's case.

(g) Positive action showing rehabilitation.

The Board acknowledges the applicant's volunteer service to this community as previously described. The Board also assessed the gravity of the applicant's prior misconduct and the age and maturity of the applicant when the offenses were committed. He was 27 years old, trained in first aid, and had served on the police force for six years. (T 53, 55-56, 79) It considered the magnitude and cumulative effect of the harm that conduct caused to the community, including the social and historical context in which his offenses were committed.

The applicant's past conduct displayed the gravest violation of the public trust conferred upon him as a police officer. His conduct was designed to, and did subvert the honest and impartial operation of the legal system, violating his solemn oath to uphold the law. As such, it constituted a direct affront to the administration of justice.

Having balanced and weighed the past conduct, the personal assurances, supported by character witnesses, and the evidence of positive action, the Board therefore finds that the applicant's showing of rehabilitation is deficient.

CONCLUSIONS OF LAW

When conducting its evaluation of the applicant's present evidence of rehabilitation, the Board cannot disregard the unique facts surrounding his past misconduct. As observed by the Supreme Court of Florida: "The

more serious the misconduct, the greater the showing of rehabilitation that will be required." *Florida Board of Bar Examiners re J.J.T.*, 761 So.2d 1094, 1096 (Fla. 2000)

The record before the Board is uncontested that the applicant engaged in grave misconduct while serving as a law enforcement officer in Dade County. The applicant's misconduct was summarized by the Board in its June 2000 Findings of Fact, Conclusions of Law, and Recommendation as set forth below:

> [The applicant] subdued Mr. McDuffie with the use of a nightstick; he handcuffed Mr. McDuffie; he watched as another officer repeatedly struck the head of Mr. McDuffie with a metal flashlight; he drove a patrol car over Mr. McDuffie's motorcycle; he used his service revolver to shoot Mr. McDuffie's wristwatch and then discarded the watch; he demonstrated to other officers where Mr. McDuffie's leg could be broken so that it would look like Mr. McDuffie was in a traffic accident; he used a tire iron to gouge the street to make it look as if Mr. McDuffie's motorcycle had been in an accident; within hours of the beating of Mr. McDuffie, he broke into the impound lot to remove an oil pan from Mr. McDuffie's motorcycle; and he lied about the events surrounding Mr. McDuffie's death during an investigation by Internal Affairs. (T 73-78, 101)

(Board's Exhibit 3 at 6-7)

The egregious nature of the applicant's prior misconduct was described in the Board's June 2000 Findings of Fact, Conclusions of Law, and Recommendation as set forth below:

> As a police officer sworn to uphold the law, the registrant engaged in abhorrent conduct. By his actions in the events surrounding the death of Mr. McDuffie, the registrant dishonored his oath of office, disgraced the law enforcement profession and gravely disserved his community.
>
> Instead of protecting Mr. McDuffie after the registrant personally subdued and handcuffed him, the registrant stood by and watched as Mr. McDuffie was fatally beaten by a fellow law enforcement officer. Instead of rendering aid to Mr. McDuffie, who was still alive after the beating, the registrant callously joked with his fellow officers about how Mr. McDuffie's legs could be broken to make his injuries look more like an accident.
>
> The registrant has no explanation for his behavior nor does the Board. The registrant's actions shock the conscience. Such conduct must be condemned without qualification regardless of whether it occurred yesterday, a year ago or twenty years ago. Such conduct offended the fundamental principles underlying the American system of justice that the registrant now wishes to serve as an attorney.

(Board's Exhibit 3 at 12) The Board reaffirms again the enormity of the applicant's past misconduct.

In its decision in *Florida Board of Bar Examiners re G.W.L.*, 364 So.2d 454, 458 (Fla. 1978), the Supreme Court of Florida discussed the phrase "good moral character." The Court held that such phrase should not be restricted to actions reflecting moral turpitude but should include "acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty,

fairness, and respect for the rights of others and for the laws of the state and nation." *Id.* (Citation omitted)

When applying the holding in *G.W.L.* to the facts of the applicant's case, it is indisputable that the applicant breached the standards announced by the Court. The applicant's actions surrounding the death of Arthur Mc.Duffie were criminal, violated the public trust given to him and caused enormous harm to the community that he was entrusted to serve. The applicant's past misconduct clearly caused "substantial doubts about [his] honesty, fairness, and respect for the rights of others and for the laws of the state and the nation."

In a bar admissions decision, Chief Justice Anstead observed: "Simple honesty and integrity are qualities absolutely essential and fundamental for those who seek to become officers of this court and to serve the citizens of Florida." *Florida Board of Bar Examiners re R.L.W.*, 793 So.2d 918, 928 (Fla. 2000) (Anstead, J., concurring in part and dissenting in part). The record before the Board is incontestable that the applicant lacked those indispensable qualities while serving the public as a police officer at the time of Mr. McDuffie's death.

The relationship between the applicant's past misconduct while a law enforcement officer and his current efforts to enter the legal profession remain a paramount consideration in the Board's evaluation of the applicant's character and fitness for membership in The Florida Bar. Based on consideration of the record before it, the Board concludes that the applicant's presentation was insufficient to meet the heavy burden of rehabilitation required of him because of the shocking nature of his past personal misconduct.

It is, therefore, the conclusion of the Board that the insufficiency of the applicant's showing of rehabilitation clearly and unequivocally establishes that he fails to meet the standards of conduct and fitness required under the provisions of Rule 3 of the Rules.

RECOMMENDATION

The Board recommends that WILLIAM F. HANLON III not be admitted to The Florida Bar under the provisions of Rule 5 of the Rules and that he is disqualified from reapplying for admission for a period of two years from the date of these findings.

DATED this 16th day of December, 2003

/s/ Eleanor Mitchell Hunter
Eleanor Mitchell Hunter
Executive Director
Florida Board of Bar Examiners

Copies: Thomas A. Pobjecky, General Counsel
Andrew S. Berman, Attorney for Applicant

CERTIFIED MAIL NO.: 7001 2510 0007 6220 6218
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BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: APPLICATION OF WILLIAM FRANCIS HANLON III FOR ADMISSION TO THE FLORIDA BAR	)	File No. 37186B

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

FINDINGS BACKGROUND

The registrant, William Francis Hanlon III, was born on April 4, 1952 in Jersey City, New Jersey. He attended Northern Virginia Community College from Winter 1971 to 1973 and Miami-Dade Community College from August 1973 to April 1974. Registrant Hanlon attended Biscayne College from September 1974 to December 1975, when a Bachelor of Arts degree was awarded him. He attended Saint Thomas University from September 1988 until August 1990, when a Master of Science degree was awarded him. Registrant Hanlon entered Nova Southeastern University School of Law in August 1997 and has not graduated to date, although he expects to do so in May 2001.

The registrant executed an Application for Admission to The Florida Bar on January 22, 1998, that was submitted for registration as a student.

During the course of the character and fitness investigation conducted by the Board pursuant to Rules 2-21.3,

3-10, 3-11, and 3-12 of the Rules of the Supreme Court relating to Admissions to the Bar (hereinafter designated as the "Rules"), certain items of information that potentially reflected adversely upon the registrant's character and fitness came to the Board's attention. An extensive investigation of the registrant's activities in question was undertaken.

The registrant was invited to appear before the Board for an investigative hearing and he did so appear on April 9, 1999. Following the investigative hearing, the Board determined that Specifications should be prepared and served upon the registrant and that the matter of his character and fitness be considered at a formal hearing.

The Specifications were served upon the registrant on July 15, 1999. The registrant was advised of his right to a formal hearing on the Specifications and the right to present witnesses and any other evidence that might be pertinent to the issues. The Board's authority to issue subpoenas was made available to the registrant.

The registrant was granted an extension to file his Answer until October 8, 1999 and he filed an Answer to the Specifications on October 4, 1999. By letter dated November 10, 1999, the registrant's attorney requested that his client's hearing be scheduled during the Board's March 2000 meeting. The formal hearing was convened on March 25, 2000 in Coral Gables, Florida. The registrant appeared at the hearing and was represented by Andrew S. Berman, Esquire.

The Specifications previously served upon the registrant read as follows:

Specification 1

That you engaged in the following illegal, unprofessional, and/or improper behavior:

(A) That on or about December 17, 1979, you were a police officer with the Miami-Dade Police Department. That on this date you were involved in a high speed chase of a motorcyclist, Arthur McDuffie, who had committed a traffic violation.

That after stopping, Mr. McDuffie was physically restrained and apprehended by you and/or other officers. That after being handcuffed, Mr. McDuffie was struck in the head by another officer and received an injury which led to his death some days later.

That after Mr. McDuffie was struck in the head, you and other officers conspired to make it falsely appear that Mr. McDuffie had been injured in a motorcycle accident in order to cover-up police misconduct, including the intentional infliction of the injury on Mr. McDuffie by a police officer. That in furtherance of this cover-up, you drove a police squad car over Mr. McDuffie's motorcycle and used a tire iron to gouge the roadway. That you also attempted to destroy Mr. McDuffie's watch.

That in an Information dated February 15, 1980 you were charged with manslaughter, manslaughter by unnecessary killing, aggravated battery, tampering with or fabricating physical evidence, and accessory after the fact. That the charges against you were eventually dismissed, you were granted immunity, and you testified on behalf of the government against the other police officers.

That a civil lawsuit was filed against you and others by the Personal Representative of the Estate of Arthur McDuffie. That this suit against you was settled before trial.

(B) That you had been involved in prior incidents where civilians and/or persons in custody were unnecessarily mistreated.

Specification 2

That you filed with the Board an Application for Admission to The Florida Bar, the accuracy of which was duly sworn to under oath by you on January 22, 1998. That Item 19.a. asks the following question:

> In your entire life, have you ever been arrested, detained or restrained, taken into custody or accused formally or informally of a felony, whether or not the charge was later reduced to a misdemeanor or other lesser charge? If yes, provide the information requested below and include a complete explanation of the circumstances leading to the arrest and the subsequent action taken by the authorities.

That you responded "yes" to this item and included the following explanation which was incorporated by reference into your sworn Application for Admission to the Florida Bar:

> [Case No. 79-21601-C 11th Circuit – Miami-Dade County, Fl.]
>
> On December 17, 1979, while on-duty with the Miami-Dade Police Department, several police officers were involved in a

high-speed chase. The motorist was eventually stopped. During the actual arrest, the subject resisted and force was used. My participation in the physical arrest involved pulling the motorist from behind with my baton around his neck forcing him to the ground and applying handcuffs. After being placed in custody, another officer struck the prisoner in the head with a metal flashlight. A senior officer on the scene directed the fabrication of a traffic accident to explain the injury. The prisoner died three days later.

On December 28, 1979, six officers including myself, were charged in connection with the death and cover-up. A few weeks later charges were dropped by the Dade State Attorney's Office, immunity was conferred, and I became a State witness.

In 1980, the Court ordered the expungement (attached) of my arrest record.

A certified copy of a Court Order to release the records to The Florida Bar is enclosed.

That this sworn explanation by you was false, misleading or lacking in candor in that you failed to disclose that you actively participated in the attempted cover-up as more particularly described in Specification 1 above.

FINDINGS OF FACT

Specification 1(A) concerns the registrant's involvement, as an officer with the Miami-Dade Police Department, in the events surrounding the death of Arthur McDuffie in December 1979. As alleged in this Specification, the registrant and other police officers were involved in a high speed chase of Mr. McDuffie, who was driving a motorcycle. Mr. McDuffie was apprehended, physically restrained and handcuffed. While handcuffed on the ground, Mr. McDuffie was clubbed on the head by an officer resulting in Mr. McDuffie's death several days later.

Specification 1(A) further alleges that after the blow to the head of Mr. McDuffie while in police custody, the registrant actively participated in efforts to conceal the source of Mr. McDuffie's injury. The registrant engaged in acts to try to make it appear that Mr. McDuffie had been injured in a traffic accident on his motorcycle. Specifically, the registrant drove a squad car over Mr. McDuffie's motorcycle and used a tire iron to gouge the roadway. The registrant also damaged Mr. McDuffie's watch.

Lastly, Specification 1(A) alleges that the registrant was charged with multiple crimes surrounding the death of Mr. McDuffie, including manslaughter and fabrication of evidence. The criminal charges against the registrant were dismissed, pursuant to a grant of immunity.

The registrant executed a sworn Answer to Specifications on October 4, 1999 by which he admitted the allegations set forth in the Specifications 1(A). The registrant added: "Hanlon underscores that he did not cause or contribute to the death of Mr. McDuffie in 1979." (Formal

Hearing Record – Board's Exhibit 3, hereinafter referred to as the "FHR-BE" followed by the Exhibit number)

During his formal hearing, the registrant acknowledged the seriousness of his misconduct, including the violation of his oath as a law enforcement officer. (Formal Hearing Transcript at 62, hereinafter designated by "T" followed by the page number) During cross-examination, the registrant admitted that he committed the following affirmative acts: He subdued Mr. McDuffie with the use of a nightstick; he handcuffed Mr. McDuffie; he watched as another officer repeatedly struck the head of Mr. McDuffie with a metal flashlight; he drove a patrol car over Mr. McDuffie's motorcycle; he used his service revolver to shoot Mr. McDuffie's wristwatch and then discarded the watch; he demonstrated to other officers where Mr. McDuffie's leg could be broken so that it would look like Mr. McDuffie was in a traffic accident; he used a tire iron to gouge the street to make it look as if Mr. McDuffie's motorcycle had been in an accident; within hours of the beating of Mr. McDuffie, he broke into the impound lot to remove an oil pan from Mr. McDuffie's motorcycle; and he lied about the events surrounding Mr. McDuffie's death during an investigation by Internal Affairs. (T 73-78, 101)

Based upon the record before it, including admissions by the registrant in his Answer and during his formal hearing testimony, the Board finds that the allegations of Specification 1(A) have been established. Accordingly, the Board finds that Specification 1(A) is proven.

Specification 1(B) alleges that the registrant had been involved in prior incidents where civilians or individuals in police custody were physically abused. By his Answer,

the registrant denied the allegation. The registrant also gave testimony and offered an exhibit during his formal hearing in response to this Specification. (T 64-67, 115-118; Formal Hearing Record – Applicant's Exhibit 2, hereinafter referred to as "FHR-AE" followed by the Exhibit Number) Based upon consideration of the record before it, including the evidence offered by the registrant, the Board finds that the evidence is insufficient to support the allegation. Accordingly, the Board finds that Specification 1(B) is not proven.

Specification 2 alleges a lack of candor by the registrant in his explanation on his original bar application pertaining to the criminal charges brought against him referenced in Specification 1(A). By his Answer, the registrant denied the allegation. During his formal hearing testimony, the registrant acknowledge that in hindsight, he could have "gone into greater detail." (T 69) The registrant testified, however, that he had no intent to hide the facts pertaining to his involvement and that he even provided the Board with the case number from the criminal case "[s]o that the Board would be aware and have access to the full and complete record of that event." (T 68, 114)

Based upon consideration of the record before it, including the registrant's presentation, the Board finds that the evidence is insufficient to support the allegation of a lack of candor. Accordingly, the Board finds that Specification 2 is not proven.

By his Answer, the registrant asserted the affirmative defense of rehabilitation. During his formal hearing presentation, the registrant called four witnesses to testify on his behalf.

Neil Sonnett is a practicing criminal defense attorney in Miami. (T 17) He represented the registrant during the 1979-1980 period as to the criminal charges arising from the beating death of Mr. McDuffie and the police cover-up. (T 18) He has had infrequent contact with the registrant since his representation of him. (T 20) He believes that the registrant is rehabilitated and "fully qualified to be a lawyer and an honest and ethical lawyer and one who can be a credit to the Bar." (T 20)

Roy Woods is an attorney who works for the County Attorney Office in Miami-Dade County. (T 22) Mr. Woods represented Dade County in its efforts to terminate the employment of several police officers involved in the events surrounding the death of Mr. McDuffie. (T 24) Due to his immunity agreement, the registrant could not be disciplined or terminated from the police department for his misconduct. (T 24-25) The registrant appeared as a witness at the administrative proceeding involving the other officers. Mr. Woods recalls that the registrant was a "very capable witness." (T 25)

Since his dealing with the registrant as a witness, Mr. Woods has also called upon the registrant for assistance in securing police records. (T 26-27). Mr. Woods feels that the registrant "is a person of very good character." (T 26)

Steven Torres is a supervisor with the Federal Bureau of Investigation. (T 33) he has known the registrant since 1982. (T 34) Over the years, they have worked together in the area of officiating at sporting events. In addition to being an official at a particular game for which the registrant is compensated, the registrant is actively involved in the organization, recruitment and assignment of officials for a college association and the American Youth Football

League. (T 35) The registrant is not compensated for these other activities and the registrant's efforts "can only be described as a labor of love." (T 36) The registrant has made a conscious effort to recruit a diverse group of officials. (T 36) Mr. ~~Woods~~ Torres described the registrant as "a person of integrity, an honest person." (T 38)

Robert Fiallo is a twenty-five year veteran with the Miami-Dade Police Department. (T 44) He first met the registrant during a riding assignment with him in 1975 or 1976. (T 44) Mr. Fiallo considered the registrant to be "the most ethical officer that [he] ever worked with." (T 45) In their discussions about the events surrounding the death of Mr. McDuffie, the registrant has been "very regretful." (T 46) Currently, Mr. Fiallo and the registrant are classmates at law school. (T 46) Mr. Fiallo thinks the registrant is "very fit, very ethical" to practice law. (T 46)

The registrant also introduced into the record several exhibits as part of Applicant's Composite Exhibit 1 including character letters from a fellow police officer (Sergeant Thomas Linehan) and a fellow official for sporting events (Elmo Gary). A letter from Francis Smith, the Past President of the American Youth Football League, was also introduced. Mr. Smith acknowledged the registrant's efforts that have led "to the overall betterment of the AYFL."

The registrant also introduced into evidence a copy of the 1982 Dade County Grand Jury Report on the use of adly force in arrests or confrontational situations. During his investigative hearing, the registrant introduced three exhibits: the registrant's law enforcement personnel records, including employee performance evaluations (FHR-BE 5 at Applicant's Exhibit 1); letters and notices of

appreciation and commendation from the registrant's career in law enforcement (FHR-BE 5 at Applicant's Exhibit 2); and a March 1998 article from the St. Mark Catholic Church newsletter referencing the registrant's past service as the coordinator of the Special Ministers of the Eucharist program (FHR-BE 5 at Applicant's Exhibit 3)

Lastly, the registrant testified on his own behalf and responded to questioning from members of the Board and Special Counsel for the Office of General Counsel. When asked if he ever apologized to the family of Mr. McDuffie, the registrant responded: "No, but I didn't kill Arthur McDuffy [sic]." (T 84) The registrant also acknowledged that the has not directly performed community service in the Central District where the beating of Mr. McDuffie occurred. (T 105)

As to whether the registrant took any action to stop the beating of Mr. McDuffie whom he had subdued and handcuffed, the registrant admitted that he had not but wished he had acted differently. (T 95) The registrant later testified that the beating happened "very rapidly", but he still had no explanation for why he reacted so badly. (T 104)

As to the registrant's conduct in showing fellow officers how to break the legs of Mr. McDuffie, the registrant confirmed that Mr. McDuffie was still alive at the time. (T 113) When asked why he did that, the registrant replied: "It was a statement that I made. It was stupid. It was callous humor, inappropriate. I don't have an explanation for it. It defies explanation." (T 115)

Upon consideration of the registrant's formal hearing presentation, the Board finds that such evidence is insufficient to establish a defense to the allegations of the Specifications except for Specifications 1(B) and 2, which the Board found not proven. The board further finds that the registrant's formal hearing presentation failed to overcome the seriousness of the proven allegations of Specification 1(A). The Board specifically finds that the registrant's formal hearing presentation failed to establish his rehabilitation by clear and convincing evidence as required by Rule 3-13 of the Rules of the Supreme Court relating to Admissions to the Bar.

CONCLUSIONS OF LAW

The Board concludes that the proven allegations for Specification 1(a) are individually disqualifying for admission to The Florida Bar. As a police officer sworn to uphold the law, the registrant engaged in abhorrent conduct. By his actions in the events surrounding the death of Mr. McDuffie, the registrant dishonored his oath of office, disgraced the law enforcement profession and gravely disserved his community.

Instead of protecting Mr. McDuffie after the registrant personally subdued and handcuffed him, the registrant stood by and watched as Mr. McDuffie was fatally beaten by a fellow law enforcement officer. Instead of rendering aid to Mr. McDuffie, who was still alive after the beating, the registrant callously joked with his fellow officers about how Mr. McDuffie's legs could be broken to make his injuries look more like an accident.

The registrant has no explanation for his behavior nor does the Board. The registrant's actions shock the

conscience. Such conduct must be condemned without qualification regardless of whether it occurred yesterday, a year ago or twenty years ago. Such conduct offended the fundamental principles underlying the American system of justice that the registrant now wishes to serve as an attorney.

Due to the egregious nature of his past misconduct, the registrant appeared before the Board with a heavy burden to demonstrate clearly and convincingly his rehabilitation. Based upon the record before it, the Board concludes that the registrant failed to meet his burden. In reaching this conclusion, the Board is mindful of the number of years that have passed since his misconduct. Yet, the mere passage of time is insufficient to establish rehabilitation from such infamous conduct.

The Board also observes that the registrant is unable or unwilling to accept full responsibility for his actions, an essential step for a truly reformed individual. For example, the registrant testified that he did not kill Mr. McDuffie. Yet, the facts clearly show that the registrant directly partook in the events leading to Mr. McDuffie's death. The registrant subdued him; the registrant handcuffed him; and then the registrant stood and watched as another officer delivered deadly blows to the head of Mr. McDuffie.

Due perhaps to his unwillingness or inability to accept full responsibility for his action, the registrant has never apologized personally to the family of Mr. McDuffie nor has the registrant ever performed community service for the community in which these notorious events occurred. Such an apology and such community service would have been viewed very favorably by the Board.

Lastly, the Board recognizes that there may be cases of misconduct for which no amount of rehabilitation would ever be sufficient. The registrant's case, however, is not one of those cases.

If he so chooses, the registrant should be able to establish rehabilitation in the future to allow his admission to the legal profession in Florida. It will undoubtedly be a difficult task. To do so, the registrant must present substantially more evidence than he did at his recent formal hearing as to all of the elements of rehabilitation listed in Rule 3-13 especially as to the element of positive action.

It is, therefore, the conclusion of the Board that the proven allegations of Specification 1(A) clearly and unequivocally establish that the registrant fails to meet the standards of conduct and fitness required under the provisions of Rule 3 of the Rules of the Supreme Court Relating to Admissions to the Bar.

RECOMMENDATION

WHEREFORE, the Board recommends that WILLIAM FRANCIS HANLON, III not be admitted to The Florida Bar under the provisions of Rules 3 and 5 of the Rules of the Supreme Court relating to Admissions to the Bar and that he be disqualified from reapplying for admission for a period of two years from the date of these findings.

DATED this 9th day of June, 2000.

/s/ Kathryn E. Resell
Kathryn E. Resell
Executive Director
Florida Board of Bar Examiners

Original: Andrew S. Berman, Attorney for Registrant

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Copies: Henry M. Coxe, Special Counsel
Thomas A. Pobjecky, General Counsel

Supreme Court of Florida

FRIDAY, DECEMBER 22, 2000

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FLORIDA BOARD OF BAR EXAMINERS
RE: W.F.H., III

**

CASE NO. SC00-1677

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ORDER

Upon consideration of the Report and Recommendation filed by the Florida Board of Bar Examiners, it is ordered that the Board's recommendation is approved by the Court and W.F.H., III, is hereby denied admission to The Florida Bar at this time.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

TC

cc: Kathryn E. Ressel
Robert G. Blythe
Thomas A. Pobjecky
Andrew S. Berman
Henry M. Coxe, III

Supreme Court of Florida

WEDNESDAY, JUNE 21, 2006

CASE NO.: SC04-185

FLORIDA BOARD OF BAR EXAMINERS

RE: W.F.H.

CONFIDENTIAL

W.F.H.'s Motion for Rehearing is hereby denied.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO and BELL, JJ., concur.

mc
Served:

[SEAL]

JOHN ANTHONY BOGGS
THOMAS A. POBJECKY
ELEANOR MITCHELL HUNTER
ANDREW SCOTT BERMAN
RICHARD C. MCFARLAIN

IN THE SUPREME COURT OF FLORIDA

IN RE: APPLICATION OF W.F. H. FOR ADMISSION TO THE FLORIDA BAR	))))	Case No: SC04-185 FBBE File No. 89481

MOTION FOR REHEARING

Petitioner, William Francis Hanlon, III, respectfully moves for Rehearing because:

1. Petitioner believes this Court overlooked and/or misapprehended black letter legal principles which have been at the very foundation of the law as we know it and which support the Petitioner's admission to The Florida Bar outright or, at a minimum, require further proceedings before he can be constitutionally denied that right. They are:

a. the Due Process Clause(s) of the U.S. and Florida constitutions;

b. the legal principle of "law of the case"; and

c. the principle of "equitable estoppel."

2. Two words utilized by the three (3) justices in their special concurrence light our way and guide us in drafting this Motion for Rehearing. Those words were "fundamental fairness." We can assume that those words were chosen wisely. They speak volumes. "Fundamental fairness" is derived from judicial interpretation of the due process clause of the Fourteenth Amendment to the U.S. Constitution. As stated by the U.S. Supreme Court, "denial of due process is the failure to observe that *fundamental fairness* essential to the very concept of justice." *Lisenba v.*

People of State of California, 314 U.S. 219, 236 62 S.Ct. 280, 290 (1942) (emphasis supplied).

3. As applied here, this case was decided on grounds *not* briefed by the parties. Both sides were looking at the case through the prism given them by the Board of Bar Examiners *and* this Court six (6) years ago. Therefore, the opinion is patently and fundamentally unfair. It represents a denial of due process of law.[1]

4. We were denied the opportunity to try to persuade this Court that Petitioner could be rehabilitated from his misconduct of 27 years ago because it was already the "law of the case" that he could. We had no reason to present detailed evidence of the events of 1979 to contradict some of the Board's erroneous findings (particularly the one that Petitioner could have prevented the death of Arthur McDuffie) because it was unnecessary; or so we reasonably thought.[2] Petitioner had every legal right to expect that he

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[1] The Board set the stage for the instant proceeding as follows in its year 2000 Report to this Court, which this Court affirmed:

> Lastly, the Board recognizes that there may be cases of misconduct for which no amount of rehabilitation would ever be sufficient. The registrant's case, however, is not one of those cases.
>
> *If he chooses, the registrant should be able to establish rehabilitation in the future to allow his admission to the legal profession in Florida.* To do so, the registrant must present substantially more evidence than he did at his recent formal hearing as to all of the elements of rehabilitation listed in Rule 3-13 especially as to the element of positive action. (Emphasis ours).

[2] We also did not focus on the testimony of a witness at the first hearing who was a former police officer, now a practicing attorney, who testified that Miami was a "war zone" back then and that success on the job was defined as surviving your shift. The Court may have overlooked that part of the record because we did not highlight it this second time

(Continued on following page)

could rely upon the fact that this matter had proceeded beyond all that and he had entered the exclusive arena of rehabilitation which he successfully completed.

5. In short, Petitioner was denied notice and a fair hearing on whether he could be rehabilitated. Manifestly, albeit unintentionally, the singular issue on which this Court ruled was a sidestep of the constitutional requirements mandated by the Due Process Clauses of both state and federal constitutions.

6. The U.S. Supreme Court ruled in *Lankford v. Idaho*, 500 U.S. 110, 111 S.Ct. 1723 (1991), that it is a violation of due process to sentence a convicted murderer to death where the state did not seek the death penalty and there was no discussion of it during the sentencing hearing. Even though the judge had the power to sentence the defendant to death without the state's recommendation, defense counsel was not on notice that the judge was actually debating that issue in his mind. The majority stated:

> If defense counsel had been notified that the trial judge was contemplating a death sentence . . . presumably she would have advanced arguments that addressed these circumstances; however, she did not make these arguments because they

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around, as we thought it unnecessary. The Court also had no benefit of psychological and psychiatric testimony that would have shown that as much as 80% of the population, if placed in similar circumstances, would have acted exactly as did Petitioner in following his sergeant's instructions on that fateful morning, again, because we were not on notice that it was an issue any longer and did not present it to the Board. All of which serves to illustrate the grave injustice visited upon Petitioner by this Court's disregard for the "law of the case" and its oversight of the principles of due process and equitable estoppel.

> were entirely inappropriate in a discussion about the length of petitioner's possible incarceration.

500 U.S. at 122, 111 S.Ct. at 1730.

7. The same principle must apply here. Petitioner was given a professional "death sentence." He had no notice that such a sentence would or could be imposed by this Court. That is fundamentally unfair and a denial of due process.

8. Petitioner has gone to bed every night for the past six years believing that if he continued to persevere and be the kind, gentle, giving human being that the *undisputed* evidence has shown him now to be, and followed the Board's prescription for his rehabilitation, he would be forgiven and one day he would be a lawyer. That was the clear message this Court made to him. He relied upon and believed that message.

9. In casting him off as an unredeemable soul incapable of rehabilitation this Court has repudiated decades of its own settled jurisprudence in this area.[3] In so doing, the Court has also retreated from the "law of this case."[4] We, as officers of the court, pridefully acknowledge

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[3] We cited many such cases in our Petition for Review. This Court has also ignored the due process requirements of *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 77 S.Ct. 752 (1957), which we argued in our Petition requires this Court to do more than point to a single episode 27 years ago to deny admission, where there is no evidence that Petitioner is *presently* unfit.

[4] *Strazzulla v. Hendrick*, 177 So.2d 1, 4 (Fla. 1965) (law of the case should never be changed by an appellate court "except in unusual circumstances and for the most cogent reasons – and always, of course, only where 'manifest injustice' will result."). The only manifest injustice here is in the Court's decision to deny Petitioner admission in light of the prior ruling that he could be rehabilitated.

and salute the Court as a great temple of justice. We believe that is so because of its illustrious precedential history of upholding our rule of law, without exceptions, without fear, without favor and regardless of the unpopularity of the cause.

10. This Court has repeatedly set people free whom it knew might be guilty, or ordered new trials for them when it knew the result would be the same, all because it understood and was required to adhere to the rule of established law and to our civil liberties that are more value to us as a people than the plight of one particular individual. The justice system of this country has evolved to where we are willing to set a hundred guilty men free to save one innocent man.

11. This case is no different. Petitioner has done nothing to warrant a professional death sentence after the Board and this Court sent a clear message to him that he need not be concerned with that possibility.

12. The Board and this Court demand absolute candor from Bar applicants, indeed from everyone who interacts with them (as they should). This ruling, however, establishes to the dismay of all who love the law and this institution that there is no reciprocity in that regard with respect to Bar admission matters. Our people must be able to take the Board and the Court at their word.

13. In that vein, and alternatively, the Court failed to consider that the doctrine of "equitable estoppel" precludes a retreat from the Board's earlier finding, affirmed by this Court, that Petitioner could be rehabilitated. That doctrine precludes parties from changing their position where others had relied on them to their detriment. The Court overlooked the fact that the doctrine of equitable

estoppel applies to governmental agencies.[5] The Board is subject to the same doctrine.

14. Equitable estoppel presupposes a legal shortcoming in a party's case that is directly attributable to the opposing party's conduct. The doctrine bars the "wrongdoer"[6] from asserting that shortcoming and profiting from his or her conduct. *Florida Dept. Of Health and Rehab. Serv. v. S.A.P.* 835 So.2d 1091 (Fla. 2003). As applied here, the Board told Petitioner (and this Court confirmed) that his prior acts were *not* disqualifying. Thus, he trimmed and streamlined his case and presentation of evidence to focus on rehabilitation only. Now, the Board inequitably benefits from his streamlined presentation and says, in essence, "gotcha." As we pointed out elsewhere, we could have presented much additional evidence and argument to establish to this Court's satisfaction that this was not a "death penalty" case, but we were never given the opportunity.

15. This case took 18 months to decide and then the Court chose to decide it *de novo* and in summary fashion, using a new rule book without notice to the parties. Respectfully, that is wrong.

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[5] *Tri-State Systems, Inc. v. Dep't of Transportation*, 500 So.2d 182 (Fla. 1st DCA 1986) (DOT could not revoke advertising permit due to its changed interpretation of statute subsequent to issuance of permit); *Salz v. Dep't of Admininstration, Div. Of Retirement*, 432 So.2d 1376 (Fla. 3d DCA 1983) (where teacher relied on state agency's representation, agency was estopped from changing its mind).

[6] This word is not used to imply a sinister motive, but to differentiate between the victim and the actor upon whose actions the victim relies.

16. "Hard cases, it is said, make bad law." *Ex parte Long*, 3 W.R. 19 (1854). This Court's decision to retreat from its affirmance of the Board's earlier conclusion that Petitioner "should be able to establish rehabilitation in the future to allow his admission to the legal profession in Florida" is an implementation of the very "result driven" decision making that is antithetical to our concept of due process.

17. No doubt this Court has the absolute right to recede from a prior opinion and, in effect, change the "law of the case." We understand and accept that principle. But none of the elements that exist in such rare reported cases exists here . . . and the Court did not justify its announced retreat from established precedent. The effect of that "retreat" is a manifest collision with former opinions holding that rehabilitation is possible in any case. In fact, the Board's lawyer who argued this case conceded in a law review article he wrote in 1994 that, "if the evidence of rehabilitation is convincing, then admission to the Bar is appropriate *regardless of the seriousness of the past misconduct.*" Thomas A. Pobjecky, (*The Florida Board of Bar Examiners: the Constitutional Safeguard Between Attorney Aspirants and the Public*), 18 Nova L. Rev. 1313, page 1329 (1994) (Emphasis ours). In his Response to our Petition, he and the Board quite properly did not deviate from that principle, arguing instead that the Board believed that Petitioner had still not done enough. And to that argument a justice asked at oral argument: "what more could he have done?"

18. Alas, if the Court was of a mind to retreat from its and the Board's prior pronouncements (something we do not believe the law of equitable estoppel permits or the facts here justify), Petitioner was entitled to notice and an

opportunity to squarely address the issue of whether he could be rehabilitated through a reopening of the evidence and with the concomitant right to file a brief to dissuade the Court from that position. He was offered neither.

19. We hope that our passion for upholding the almost sacred principles of due process and fair play is self evident and we trust that this Court will adhere to those principles and grant rehearing and either 1) admit Respondent outright under principles of law of the case and equitable estoppel because he has been rehabilitated or 2) remand the matter for further proceedings including to allow the evidence to be reopened to address the issue raised by the Court's *sua sponte* retreat from established law.

WHEREFORE, Petitioner moves for rehearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail to: Thomas Pobjecky, General Counsel, Florida Bar Examiners, 1891 Eider Court, Tallahassee, Florida 32399-1750 and, on this ___ day of May, 2004.

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CERTIFICATE OF FONT

I certify that the font used in this Petition is Times New Roman 14 point.

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